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August 24, 2006

VIA E-FILING

The Honorable Gregory M. Sleet
United States District Court
Federal Building
844 North King Street
Wilmington, DE 19801

Re: *Merck & Co., Inc. v. Apotex, Inc.*
C.A. No. 06-230

Dear Judge Sleet:

Attached is an agreed-upon proposed revised scheduling order that reflects the dates set at the scheduling conference. It includes the parties' agreed-upon extension of the date for initial disclosures as was discussed at the conference. It also adjusts the dates for motions *in limine*, if any, in view of the date set for the pretrial order (the parties have in mind, however, the Court's comments on the lack of necessity for motions *in limine* in bench trials). Also attached for reference is a table of the dates in the scheduling order.

Respectfully,

/s/ Mary B. Graham

Mary B. Graham (#2256)

MBG/dam
Enclosures (2)

cc: Louise Walsh, Esquire (via e-mail)
Richard L. Horwitz, Esquire (via e-mail)
Nicolas G. Barzoukas, Esquire
John F. Lynch, Esquire

533948

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MERCK & CO., INC.,)	
)	
Plaintiff,)	
)	C.A. No. 06-230 (GMS)
v.)	
)	
APOTEX, INC.,)	
)	
Defendant.)	

RULE 16 SCHEDULING ORDER

This ____ day of August 2006, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on August 8, 2006, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before September 21, 2006.
2. **Joinder of Other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before October 13, 2006.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiff whether it intends to rely upon advice of counsel as a defense to willful infringement no later than September 20, 2006. If defendant elects to rely on advice of counsel as a defense to willful infringement, defendant shall produce any such opinions on which defendant intends to rely to plaintiff no later than October 20, 2006.

4. **Markman Claim Construction Hearing.** The parties currently believe there is no need for a *Markman* hearing. However, as the parties contentions regarding infringement and/or invalidity become known during discovery, the parties may request that a *Markman* hearing be scheduled.

5. **Discovery.** All fact discovery in this case shall be initiated so that it will be completed on or before February 20, 2007. Expert Discovery in this case shall be initiated so that it will be completed on or before April 5, 2007.

a. **Discovery and Scheduling Matters:** Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this Court's website at www.ded.uscourts.gov. Should the Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the Court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

b. Maximum of twenty-five (25) interrogatories, including contention interrogatories, for each side.

c. Maximum of fifty (50) requests for admission by each side.

d. Maximum of ten (10) depositions by plaintiff and ten (10) by defendant, excluding expert depositions.

e. Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the party having the burden of proof by February 5, 2007; rebuttal expert reports are due by March 5, 2007.

6. **Confidential Information and Papers Filed Under Seal.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact United States Magistrate Judge Thyng to schedule a settlement conference with counsel and the clients.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than May 9, 2007. Answering letter briefs shall be no longer than five (5) pages and filed with the

Court no later than May 23, 2007. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before May 30, 2007. The Court shall hold a Status Conference to hear argument and to determine whether the filing of any motion will be permitted on June 12, 2007 at 8:30 a.m. **Unless the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.**

9. **Case Dispositive Motions.** All case dispositive motions and an opening brief and affidavits, if any, in support of the motion shall be served and filed on or before June 26, 2007. Briefing will be presented pursuant to the Court's Local Rules, unless the parties agree to an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set forth in this Scheduling Order **must** be accompanied by an explanation or your request will be denied.

10. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

12. **Pretrial Conference.** On November 13, 2007, beginning at 10:00 a.m., the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order (a sample form of Pretrial Order can be located on this Court's website at www.ded.uscourts.gov) satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). Thirty (30) days

before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's counsel any comments on the plaintiff's draft as well as the information defendant proposes to include in the proposed pretrial order. Motions *in limine*: No party shall file more than ten (10) motions *in limine*. Briefs (**opening, answering and reply**) on all motions *in limine* shall be filed on the following schedule: Opening briefs due on September 19, 2007; answering briefs due on October 3, 2007; reply briefs due on October 10, 2007. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the Court the joint proposed final pretrial order with the information required by the form of Final Pretrial Order which accompanies this Scheduling Order on or before October 15, 2007.

13. **Trial.** This matter is scheduled for a 5 day bench trial beginning at 9:00 a.m. on December 10, 2007.

14. **Scheduling.** The parties shall contact Chambers at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

UNITED STATES DISTRICT JUDGE

532971

Case Schedule**Merck & Co., Inc., v. Apotex, Inc. C.A. No. 06-230 (GMS)**

Description	Date
Rule 26 (a) Initial Disclosures	September 21, 2006
Joinder of Parties and Amendment of Pleadings	October 13, 2006
Reliance Upon Advice of Counsel	September 20, 2006; Produce Opinions: October 20, 2006
<i>Markman</i> Claim Construction Hearing	(parties agree no need for hearing)
Fact Discovery	February 20, 2007
Expert Discovery	April 5, 2007
Expert Reports	Opening: February 5, 2007 Rebuttal: March 5, 2007
Letter Briefs requesting permission to file Summary Judgment Motions	Opening: May 9, 2007 Answering: May 23, 2007 Reply: May 30, 2007
Status Conference re: Letter Briefs requesting permission to file Summary Judgment Motions	June 12, 2007 at 8:30 a.m.
Case Dispositive Motions	June 26, 2007
Motions in Limine	Opening: September 19, 2007 Answering: October 3, 2007 Reply: October 10, 2007
Pretrial Order	October 15, 2007
Pretrial Conference	November 13, 2007 at 10:00 a.m.
Trial- 5 Day Bench Trial	December 10, 2007 at 9:00 a.m.